

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

THE COMMONWEALTH OF PUERTO
RICO, *et al.*

Debtors.¹

PROMESA Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**ACKNOWLEDGEMENT OF CONSTITUTIONAL CHALLENGES, NOTICE OF
POTENTIAL PARTICIPATION, AND MOTION FOR ENLARGEMENT OF TIME BY
THE UNITED STATES OF AMERICA**

The United States hereby acknowledges receipt of the Court's three orders titled *Order Regarding Notice of Constitutional Challenge to a Statute* (Docket Entry Nos. 18489, 18620, and 19016) certifying to the Attorney General of the United States various challenges to the constitutionality of the Puerto Rico Oversight, Management, and Economic Stability Act

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284) (Last Four Digits Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

(“PROMESA”), 48 U.S.C. § 2101 et seq., as well as title 11 of the United States Code (“Bankruptcy Code”).

The United States has a statutory right to intervene in any federal court action in which the constitutionality of an Act of Congress is drawn into question. 28 U.S.C. § 2403(a). Pursuant to Federal Rule of Civil Procedure 5.1, and Federal Rule of Bankruptcy Procedure 9005.1, the United States may intervene within sixty days after (i) the filing of a notice of a constitutional challenge or (ii) the Court’s certification of the challenge, whichever is earlier, unless the Court sets a later date. Fed. R. Civ. Proc. 5.1(c). Before that period expires, the Court “may reject the constitutional challenge, but may not enter a final judgment holding the statute unconstitutional.” *Id.* By operation of Rule 5.1, the earliest, current deadline for the United States to determine whether it will defend the constitutionality of PROMESA and the Bankruptcy Code in this case is December 13, 2021. *Order Regarding Notice of Constitutional Challenge to Statute* (Docket No. 18489, entered October 13, 2021).

Pursuant to Federal Rule of Bankruptcy Procedure 9006(b)(1), the United States respectfully requests a reasonable enlargement of time to consider the issue of intervention on the various constitutional challenges. The Solicitor General of the United States is responsible for determining whether the United States should intervene to defend the constitutionality of an Act of Congress. 28 C.F.R. § 0.21 (“The Solicitor General may in consultation with each agency or official concerned, authorize intervention by the Government in cases involving the constitutionality of acts of Congress.”). That determination requires sufficient time to consult with affected government agencies and components, and that process is ongoing. Counsel for the United States also faces pressing deadlines in other litigation matters. Accordingly, the United States respectfully submits that cause exists for enlarging the time for it to notify the Court and

other parties whether the United States will defend the constitutionality of PROMESA and the Bankruptcy Code.

In accordance with paragraph I.H. of the *Fifteenth Amended Notice, Case Management and Administrative Procedures* (Docket Entry No. 17127-1), the United States certifies that, prior to filing this motion, reasonable, good-faith communications have occurred with counsel for the Financial Oversight and Management Board for Puerto Rico (“Oversight Board”) and the plan objectors challenging the constitutionality of PROMESA and the Bankruptcy Code. Based on those communications, the United States reports that the Oversight Board, Sucesión Pastor Mandry Mercado, PFZ Properties, Inc., and Suiza Dairy Corp do not consent to the requested relief. Arthur Samodovitz and Peter Hein do consent. The United States received no response from the other plan objectors lodging constitutional challenges.

Accordingly, the United States respectfully requests an enlargement of time until January 31, 2022, to notify the Court and the parties whether the United States will defend the constitutionality of PROMESA and the Bankruptcy Code. If the United States decides to do so, it will file its brief in support of the statutes’ constitutionality within thirty days thereafter.

This 17th day of November 2021.

Respectfully submitted,

BRIAN BOYNTON
Acting Assistant Attorney General

ROSA E. RODRIGUEZ-VELEZ
United States Attorney

/s/ Matthew J. Troy
RUTH A. HARVEY
MICHAEL J. QUINN
MATTHEW J. TROY
USDC-PR # G02707

Attorneys, Civil Division
U.S. Department of Justice
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044
(202) 514-9038 (o)
(202) 307-0494 (f)
matthew.troy@usdoj.gov

Attorneys for the United States of America

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of November 2021, I caused a true and correct copy of the foregoing *Acknowledgement of Constitutional Challenges, Notice of Potential Participation, and Motion for Enlargement of Time by the United States of America* to be filed with the Clerk of the Court using the CM/ECF system which will generate electronic notification to all CM/ECF participants in these cases.

/s/ Matthew J. Troy
Matthew J. Troy